Damned if you do, Damned if you don’t: Reflections on Brexit and Grexit

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In 2016, Britain will hold a Referendum on whether it should remain in the EU. This will be important domestically and also for Europe. It is going to be soon upon us, but much is likely to change in the meanwhile. To begin with, the spectre of Greece leaving the euro zone will loom large in the debates. If Greek leaves the euro, then Britain may even decide to argue that the Euro be disbanded. But the UK should not be too confident. It looks as if Greece is going to stay but at a hefty price: the EU imposed structural reforms in exchange of a bailout that may not be successful in the long term. Greek sovereignty has been silenced, and the medicine of austerity has been once again forced down their throat. Were it not to work, Britain could insist that the monetary union is too dysfunctional and has to be abandoned in favour of a return to the single market.

But not all is simple for the UK: domestically, it faces major constitutional challenges. Each of those challenges is a direct legacy of Tony Blair’s project. During his labour government, Blair introduced the Scotland Act 1998 that opened the gates to a progressive devolutionary slope. The same year, the Human Rights Act 1998 was introduced and claimed to bring back human rights to the UK from Strasbourg. Blair promised several times that he would ask the British people to express their opinion on the EU through referendum. He never maintained that promise. David Cameron is bound by the promise to do it as opposed to Blair (Blair never thought it opportune).

The devolution debate has acquired momentum after the IndyRef of October 2014. The newly re-elected Tory government is flirting with the idea of scrapping the HRA 98 and replace it with a UK bill of rights that would also modify the relation of the UK to the ECHR (but it is really unclear how or to what extent). The Brexit referendum is perhaps the least daunting, and in any case the less immediate, of those challenges. After all, David Cameron wants to remain in the EU, even if he would like to do so at his own conditions; namely, what he wants is for the EU to be a market with no real political ambition.

The biggest challenge for the UK is the relation of Scotland to the whole. Here there is a parallel with the EU: Scotland is to the UK what the UK is to Europe. On 18 September 2014, the Scottish people voted against independence by a narrow majority. They were promised in return more devolution (DevoMax) within the UK, but they haven’t seen reforms so far. Instead of quelling the thirst of many Scots for independence, the referendum was accompanied by hollow Westminster’s promises, and ultimately propelled the SNP at the last elections and made it a dominant power north of the border. The SNP’s tide washed away labour. It now promises to jump on any future occasion to break free from the Union, especially if the UK decides to break free from the EU.

It is interesting to note that the major obstacle for Alex Salmond’s campaign in favour of independence was the uncertain relation between Scotland and the EU. Salmond tried to downplay the issue, but was put on the spot for doing so by opponents who correctly noticed that Scotland’s place in the EU would have had to undergo very complex negotiations and there was no guarantee that they would end up being to the advantage of Scotland. Were the UK to vote for Brexit, Scotland’s position vis-à-vis Europe would be much more different. In that case, the EU would no doubt have a strong interest to keep Scotland. And this would inflame even further the will of Scotland to separate from England.

The second domestic challenge is the HRA 1998. Back then the labour government struck a complex legal and political compromise that attempted to preserve parliamentary sovereignty while introducing a new ground of judicial review based on human rights. The HRA 98 also mentioned that UK courts would have to take into account Strasbourg jurisprudence, thereby recognizing the role of the supranational case law, while refraining from making it strictly binding. I studied the HRA 98 from the very beginning; it did not usher in a rights revolution or excessively upset the balance of power. Of course, it had an impact. To be honest, I predicted the fragility of the HRA: it shows legal limitations that could be seen from the very beginning. One above all: the HRA does not

entrench rights. It is a statute like any other and as such it can be repealed by subsequent legislation. The only difference is that it cannot be impliedly repealed, which means that it requires explicit legislation to do so. But that is exactly what the Minister of Justice, Mr Gove, is trying to achieve.

The third challenge is apparently smaller from a domestic viewpoint. The EU is not doing so well, while David Cameron has just won a full mandate, after five years of cohabitation. In principle, he has a strong negotiating positions, and the failure of Greece may give him even a better position vis-à-vis the perils of the monetary union. He may even want to argue in favour of disbanding the Euro in order to bring back the EU to his preferred idea of a market with no political power attached. When Cameron will sit at the table, he will ask for a few concessions that he should be able to present to British voters as a winning new deal on Europe. There is no reason to think that he will not be able to have those concessions and then spin the information so as to persuade voters that he has achieved the best deal. In all likelihood, Britain will not exit in 2016, but it is not clear whether it will silence those who really do not like the EU. After all, the political spectrum in England is fast moving to the right, and the real split now is between the moderate Tories (only a few) who are ok with a market oriented Europe and the remaining Euro sceptics represented by Tories and Ukippers.

David Cameron can win the EU referendum, just as he won IndyRef in 2014. But winning by spinning does not resolve existing political divisions because it does not address substantive problems. As pointed out, Scotland was offered *Devomax* as an incentive to stay in, but nothing has happened so far. This reinforced the SNP and it is likely to lead to a stronger claim for independence in future years rather than a weaker one. Any unfinished business with the EU, or with the Council of Europe, is likely to give momentum to those who want to exit and have an independent UK.

Domestically, the UK faces great social and constitutional challenges. It is unclear for how long the UK will be composed of four nations. Scotland is closer to independence today than it was last year. Inequality in the UK is huge and in times of recession it is a dangerous situation to entertain: it tends to drive people to the right and towards xenophobic positions. The relation with the ECHR has never been quite clearly explained to the people in the UK, and the advantages of the EU are mysterious to many. Despite this generalized lack of knowledge, the preferred instrument for British (and European) politicians is the referendum. I guess this is because it gives the impression of bringing back democracy: but is it really the case?

The Age of Referenda

What strikes the observer in this time of upheaval is the ubiquitous use of referenda to decide the political future of European countries. Why is it so popular all of a sudden? All over Europe there is thirst for a) democracy b) politics. However, direct democracy is often overrated and greatly misunderstood. It is overrated in the IndyRef 2014: a referendum success has not quelled the desire to break free of the scots. We also saw it with the Irish No to the Lisbon treaty: what appeared to be a defeat was corrected a mere two years later in a re-match with a victory. But a referendum can at times be underrated: the French and Dutch No to the Constitutional Treaty could not be recovered and the project had to be put aside.

Even more important is the thirst for genuine politics at the European level. The negotiations between Greece and Europe triggered opposite feelings. The crux is that Europe is treating Greece as a debtor in a creditor/debtor relation, rather than treating Greek politicians as politicians engaged in a negotiation to improve on the future of a country. Greek politicians are not regarded as equal political interlocutors. Thus a Greek referendum brings to the table the voice of the people, and the claim for equal political voice of the politicians. The people of Greece have no real choice though: it is rather submission or exit and neither of these two options is particularly exciting. Now that the referendum has taken place, and the Greek people have expressed their thirst for democracy, politics may eventually enter the scene. So Grexit can be interpreted as the exit of the creditor/debtor couple, and the entry of the political characters.

David Cameron, just like Tsipras, is using the Referendum as a bargaining tool: he wants to have more negotiating power in Brussels, and wants to use the vote as a weapon. If his voice is heard in Brussels, then he can present his results as warranting the UK's presence in the union. The real problem here lies with the vision of Europe of British Tories. I am not sure that I want England in Europe at all costs. NB: I said England – not

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To say the least, there is no great sympathy for the EU in England on the right of the political spectrum. Part of it is ideological, but one cannot deny that they do have a point when it comes to the Euro, and Greece illustrates it pretty well: The late Wynne Godley pointed out that Maastricht was a faulty agreement in 1992. He acknowledged that Sovereignists have a point in wanting to preserve fiscal control. He also pointed out that Federalists had a point in trying to concentrate fiscal power once the currency would be in place. What did not make sense then was to ask for a common currency without setting up governing institutions. David Cameron would like to return to 1992; he would want a pre-Maastricht Europe where Britain enjoys the benefits of the market without paying for the loss of sovereignty. It is a very old conception of Europe. Unfortunately, that out-dated conception of Europe is not necessarily worse than the present conception of Europe with a common currency and no ability to co-ordinate the 19 countries that are part of it.

What will happen then? The Yes is likely to win: the UK will remain in Europe. But it is likely to be a pyrrhic victory. What I am worried about is that whichever way the referendum goes, it will be a setback to the European project. It is not desirable to have England pull out of the EU, but it is not desirable either to have a member that constantly pulls toward a purely market based conception of Europe. Whichever the result of the referendum, England may end up in a bind: damned if you stay, damned if you don't.

Europe should also reflect: what really went wrong for it to be in this position? The full explanation would take very long, but I want to offer one symbolic parallel. The union of the UK is crumbling, just as the union of Europe. A substantive problem that plagues both unions is that of poverty: outside London, there are huge swathes of poverty. Parts of the UK are amongst the poorest regions in Europe. UKIP has managed to convince voters that the problem lays in Europe. The Tory government did not do much to suggest the contrary. The truth is that the UK is failing its own citizens and lets the EU take the blame for it. At European level, one can easily argue, the lack of equality amongst countries and the toleration of huge levels of poverty deeply affects the sense of justice produced by EU institutions.

A naïf belief that the UK market will fix gross inequalities at home drove much of the domestic policies since the age of Margaret Thatcher. What is curious is that by insisting on austerity and cuts, Margaret Thatcher paved the ground for the resurgence of Labour with its claims of social equality and justice through the HRA 1998, the Scotland Act, and so on and so forth. To believe that the market will take care of political unity is sheer madness. The same can be said for the EU: to let the market drive integration, and then set up a headless monetary union, were just mistakes based on similar convictions. However, reality always comes back to haunt us: equality and solidarity are not provided for by the market, nor are they to be expected without governing institutions. Either there is a clear vision that binds together countries by providing safety nets and solidarity or the union will break apart. Each community will rightfully seek to counteract the perverse effects of the market that makes the rich richer and the poor poorer.

The Europe of austerity is only a Europe waiting to express itself. It is waiting for a better time. But when it gets there, it is essential that it does not merely ask for more market or for the reinforcement of market ideology. It is in the ashes of what remains of the EU that a true European left can be born. A secular, egalitarian left with a vision of Europe in the world and with at its centre an Ethical vision, not an Economic one. Europe should be an ethical example for the world. It cannot allow human rights to be put into doubt. It cannot allow Greece to fail or any other country to experience insecurity and poverty.

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